IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 29349-M of 2005

DATE OF DECISION : 12.09.2006

Kiran Bala

.... PETITIONER

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. S.P.S. Sidhu, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

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Petitioner Kiran Bala has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 110 dated 21.6.2004 under Sections 406/420 IPC, registered at Police Station Kotkapura, Tehsil and District Faridkot.

2. In this case, firm M/s Jai Durga Rice Mills, Kotkapura entered into an agreement with PUNSUP on 22.9.2001 for custom milling of paddy. Under the said agreement, the firm was allotted 111285 bags of paddy for custom milling. Subsequently, on physical verification, it was found that only 2370 bags of paddy were lying in the mill premises against the balance of 17373 bags of paddy. Hence, a shortage of 15003 bags of paddy was found, which the said firm is alleged to have mis-appropriated. Consequently, the aforesaid FIR was registered against partners of the firm.

3. I have heard counsel for the parties and gone through the contents of the FIR.

4. Counsel for the petitioner contends that the petitioner is a sleeping partner and her son Deva Nand is another working partner of the firm and only he had signed the agreement with the PUNSUP. Therefore, only he is liable for the alleged offence. It is further contended by counsel

that in the agreement, there is an arbitration clause, according to which in case of any dispute between the firm and the department, the same will be decided by the Arbitrator. Counsel contends that liability of the firm is purely a civil liability, therefore, no offence under Section 406 IPC can be said to have been made out. In support of his contention, counsel for the petitioner relied upon judgments of the Supreme Court in ***Sham Sunder and others*** v. ***State of Haryana,*** 1989 (2) Recent Criminal Reports 494 and ***Kailash Verma*** v. ***Punjab State Civil Supplies Corporation and another,*** 2005 (1) Recent Criminal Reports 727.

5. On the other hand, counsel for the respondent-State, while referring to the reply filed by way of affidavit of DSP, Sub Division, Kotkapura, submits that the petitioner is not a sleeping partner. Actually, she is also active partner with her son. He submits that in the firm, there are only two partners i.e. the petitioner and her son and both of them are active partners. Counsel for the respondent further submits that the petitioner herself had given an affidavit to make good shortage of the paddy supplied by the PUNSUP to the firm. Counsel contends that merely because there was an arbitration clause in the agreement, it cannot be said that the dispute in the present case is of civil nature. He has referred to the decision of this Court in ***Pawan Kumar*** v. ***State of Haryana,*** 2006 (2) Recent Criminal Reports 162, wherein it has been held that merely because there is an arbitration clause in the agreement of custom milling, it cannot be said that the dispute is purely of civil nature and on that ground, the FIR cannot be quashed.

6. After hearing counsel for the parties and going through the contents of the petition as well as the reply, I do not find any merit in the instant petition. The shortfall of 15003 bags of paddy, on physical verification, as alleged in the FIR, has not been disputed. Only it has been stated that the petitioner was a sleeping partner and she did not sign the alleged agreement, therefore, she is not liable for the criminal action. It has also been stated that there is an arbitration clause in the agreement and in view of this, the petitioner is not liable for criminal action. In the written

statement, it has been specifically pleaded that the petitioner is not a sleeping partner, but she along with her son, another partner, is actively participating in the business affairs of the firm. In my opinion, merely on the grounds stated in the petition, the FIR cannot be quashed, where there are specific allegations of mis-appropriation. The petitioner herself had given an affidavit, in which she had stated that the shortfall of the paddy will be made good. This Court in ***Pawan Kumar*** v. ***State of Haryana*** (supra), while taking into consideration the judgment of the Supreme Court in ***Kailash Verma*** v. ***Punjab State Civil Supplies Corporation and another*** (supra), has held that mere existence of an arbitration clause in the agreement cannot be construed to be a bar on criminal proceedings. In this regard, this Court has observed as under :-

> "21 .... An Arbitration clause enables parties to seek adjudication of the civil consequences of the violation of a contract. An Arbitration clause does not envisages adjudication of criminal consequences of an alleged breach of contract. The Arbitrator, would obviously adjudicate the civil consequences of the violation of the contract and if this violation leads to the commission of a criminal offence, the Arbitrator would have no jurisdiction to investigate or launch prosecution, in respect thereof. The mere existence of an arbitration clause or the pendency of arbitration proceedings would, in my considered opinion, not oust the jurisdiction of criminal Courts, to consider whether on the facts narrated in the FIR, a criminal offence has been committed. The judgments relied upon by learned counsel for the petitioner namely; Bal Kishan Das v. P.C. Nayar (supra), and Kailash Verma v. Punsup and another, (supra), in my considered opinion, do not aid the petitioner in any manner.
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> 22. In the aforementioned judgments the Hon'ble Supreme Court has not laid down any absolute proposition of law that the existence of an arbitration clause or the pendency of arbitration proceedings would entail an automatic quashing of

an FIR. In Bal Kishan Das (supra), after examining the facts of the case and specifically taking note of the fact that after registration of a case under Section 409 of the IPC, the Vigilance Department dropped the case and that arbitration proceedings were pending for more than 17 years, the Hon'ble Supreme Court quashed criminal proceedings. This judgment, in my considered opinion, cannot be construed to be a precedent for the proposition that the existence of an arbitration clause bars the filing of a complaint or an FIR for an offence under Sections 406/409 of the IPC etc. The next judgment namely; Kailash Verma's case (supra) also does not set down any absolute proposition that the existence of an arbitration clause would necessarily oust the right of an aggrieved party to lodge an FIR nor does the aforementioned judgment lay down any absolute rule of law that the existence of an arbitration clause would bar criminal proceedings. In Kailash Verma's case (supra), the appellant was discharged by the trial Court. The said order was reversed and the matter remitted to the trial Court. The Supreme Court held that as there was no *prima facie* evidence of entrustment of paddy or shortage of rice supplied to the Corporation, and the dispute disclosed being civil in nature, the petitioner could not be prosecuted."

In the present FIR, there are specific allegations of entrustment of paddy and on physical verification, 15003 bags of paddy were found short, which according to the prosecution version have been mis-appropriated.

7. In view of the aforesaid facts, in my opinion, the FIR cannot be quashed on the grounds, taken in the petition.

8. Dismissed.

September 12, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**